

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.23554 OF 2004

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BETWEEN:

Rameswar Prasad son of Sri Ram

..Petitioner

vs.

The Deputy Inspector General, CISF, South Zone, Chennai and another.

..Respondents

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THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.23544 OF 2004

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ORAL ORDER

Heard the learned counsel for the petitioner and the learned Assistant Solicitor General for the respondents.

Aggrieved by the order of the 1st respondent dated 04-11-2003 partly modifying the order of the 2nd respondent dated 16-05-2003 and imposing on the petitioner the penalty of reduction of pay by one stage from Rs.3,425/- to 3050/- in the time scale of pay of Rs.3050-75-3950-80-4590, for a period of two(2) years; directing that the petitioner will not earn increments of pay during the period of reduction; and further that on the expiry of the period of reduction, the reduction would have the affect of postponing the petitioner's future increments of pay, the writ petition is filed.

The petitioner is a Constable employed as such in the Central Industrial Security Force. While working as Constable at the VSP, Visakhapatnam, on 21-06-2002 a charge was framed alleging that while he was detailed to "A" shift duty from 0500 hours to 1300 hours on 13-05-2002 in B.C.Gate at about 1010 hours, in a surprise check he was found carrying Rs.60/- as against Rs.10/- declared by him as pocket money at the time of entering the shift duty in the morning and alleging that inferentially he collected the extra amount of Rs.50/- adopting illegal means, thereby exhibiting indiscipline and misconduct i.e., conduct unbecoming of the member of the Force. After a due process of inquiry, of which there is no complaint, the disciplinary authority-the Assistant Commandant by the order dated 12-07-2002 awarded the punishment of withholding of one (1) increment due on 01-10-2002 for a period of one(1) year without cumulative effect. In arriving at this quantum of punishment the Assistant Commandant recorded that though he felt that stringent punishment was in order, he takes a lenient view considering the petitioner's future service and to afford him a chance for improvement in future.

The 2nd respondent thereupon in purported exercise of the powers under Rule 54 of the Central Industrial Security Force Rules,2001(the Rules) read with Rule.9(2B) of the Central Industrial Security Force Act,1968(the Act) came to the conclusion that the punishment imposed by the Assistant Commandant by the proceedings dated 12-07-2002 was inadequate to the gravity of the charge of misconduct proved. Accordingly the 2nd respondent cancelled the order dated 12-07-2002. On 25-12-2002 a fresh memorandum of charge was issued to the petitioner reiterating the same charges as earlier. This time the inquiry proceedings were initiated for the purpose of imposing a major penalty following the appropriate procedure. Along with the charge memo dated 25-12-2002 was communicated a statement of the imputation of misconduct or misbehaviour; the list of documents proposed to sustain the charge

and the list of witnesses by whom the charge is proposed to be sustained. A *de novo* inquiry was held. The petitioner submitted explanation on 06-01-2003. Eventually by the order of the 2nd respondent dated 16-05-2003 the punishment of reduction of pay to a lower stage from Rs.3425/- to 3050/- for a period of three years w.e.f from the date of issue of the order, with a direction that the petitioner would not earn increments of pay during the period of reduction and on the expiry of the period the reduction would have the effect of postponing his future increments, was passed. The petitioner preferred an appeal to the 1st respondent.

The 1st respondent by the proceedings dated 14-11-2003 concurred with the conclusions of the 2nd respondent that the misconduct was one warranting a major penalty, and also recorded that the punishment was "little harsh". The 1st respondent thereupon modified the penalty imposed by the 2nd respondent to the penalty now imposed, i.e. reduction of pay by one stage from Rs.3425 to 3350/- in the time scale of pay of Rs.3050-75-3950-80-4590 for a period of two(2) years; that the petitioner would not earn increments of pay during the period of reduction and on expiry of the period, the reduction would have the effect of postponing the future increments of pay.

Sri.V.R.Avula, learned counsel for the petitioner urged several grounds to attack the impugned orders of the 2nd and 1st respondents respectively. *Inter alia*, it is contended that the 2nd respondent could not have ordered a fresh inquiry; if 2nd respondent felt that the punishment was inadequate, he ought to have exercised discretion and imposed a different penalty after notice and opportunity to the petitioner and also that the conduct of the 2nd respondent in appointing an inquiry officer, framing a fresh charge-memo and imposing the penalty which he did by the orders dated 16-05-2003 was unwarranted and unauthorized. The substratum of the petitioner's case, however, is that the circumstances of the petitioner having just Rs.50/- in excess of what he allegedly declared on the morning of entering into duty is not a conduct so grave as to warrant the extreme penalty of reduction of pay for two (2) years, stoppage of increments for a period of two (2) years and also cumulative stoppage of increments which would have the affect through out his career and would also affect his pensionary benefits. This penalty would continue for more than 25 years of remaining service that the petitioner has, is the plaintive plea of the petitioner.

The contentions on behalf of the petitioner with regard to the validity of the impugned orders or to the authority of the 2nd respondent to have ordered a *de novo* inquiry, merit no acceptance by this Court. Sec.9(2B) of the Act empowers the prescribed authority. That the 2nd respondent is the prescribed authority is not in dispute. The prescribed Authority may *suo moto* call for the records of any proceedings and after making such enquiry in the prescribed manner, pass such order thereon as he thinks fit. Rule 54 of the Rules is the revisional power of an authority superior to the authority making the order. The 2nd respondent as a authority superior to the Assistant Commandant had the power under Rule.54 to *suo moto* call for the records of the Assistant Commandant and revise any order made by him including directing further inquiry as is considered proper in the circumstances of the case. Exercising the conjunctive authority available to the 2nd respondent from the presents of Sec.9(2B) read with Rule 54 of the Rules, the 2nd respondent issued the order dated 13-12-2002 setting aside the punishment and by the order dated 25-12-2002 initiating a fresh process of departmental inquiry for imposition of major penalties. There is no infirmity in the procedure followed thereafter. There was adequate opportunity provided to the petitioner and a meticulous examination of the record by the respondents as is apparent from the orders dated 16-05-2003 and 04-11-2003. Infact the 1st respondent by the order dated 04-11-2003, as already observed has also interfered with the fresh penalty imposed by the 2nd respondent and had tuned it down from reduction of pay to a measure less harsh than that imposed by the 2nd respondent, for a lesser period i.e., two(2) years including the period for which increments are to be withheld.

On the aforesaid analysis this Court does not find any procedural infirmity in the process of arriving at the petitioner's guilty, any lack of competence by the 2nd respondent in exercising power under the Act and Rules or in due application of mind to the record of the case to the extent of conducting that whether the evidence on record establishes the petitioner's misconduct. On the quantum of punishment eventually imposed on the petitioner, this Court is of the considered view that it is grossly disproportionate to the misconduct charged and established.

The charge against the petitioner is a bit vague. What is clear in the charge is that the petitioner was found in possession of Rs.60/- as against Rs.10/- he entered duty

with. Thereafter the charge contains a clause, which is at best inferential in character. This part of the charge is that the amount of Rs.50/- must have been collected by the petitioner, by illegal means. It is too well settled that even in departmental proceedings conclusions cannot be drawn on the basis of surmises, conjunctures or speculations. If the petitioner was alleged to have collected amounts by adopting illegal means such as extortion or otherwise there should have been a specific charge duly identifying the persons from whom he allegedly collected the amount and bringing such relevant facts on to the record in the disciplinary inquiry. No such attempt is discernable. Therefore the charge simplicitor is that he was found with excess money in contravention of the regulations and an excess money of Rs.50/-.

The petitioner is a member of the C.I.S.F a premier security agency of the country. The C.I.S.F is engaged in the maintenance of industrial security across the Republic. Highest levels of integrity and efficiency of the members of this organization is a national desideratum. Therefore, it cannot be found fault with if the respondents insist on rigorous standards of integrity, commitment, professionalism and adherence to conduct regulations. On this analysis the petitioner's conduct as alleged and proved, viz., of carrying excess cash with him contrary to the regulations (which requires declaration of pocket money while entering duty) is a serious charge of misconduct, but is not so serious as to be on par with collection of money by extortion or other illegal means in abuse of office. That charge of misconduct is neither specifically alleged nor established by any evidence. In the considered view of this Court the eventual punishment of reduction of pay for a period of two(2) years, stoppage of increments also for two(2) years and with cumulative effect appears harsh and disproportionate, on the above and aforesaid analysis of the nature of the misconduct alleged and proved against the petitioner.

The petitioner is now around 33 years of age and he has about 27 years of service to go. The cumulative stoppage of increments would mean deprivation of the incremental benefits month after month for 27 years, which is a considerable component, computed at the evening of his career. This would also have the affect of considerable diminution of his terminal benefits as those are dependant on the last pay drawn.

In the fitness of things and having regard to the factual matrix of the case, in the considered view of this Court the balance between the administrative efficiency and good governance and meeting out just desserts for official delinquency would be met in this case if the petitioner were visited with a lesser punishment than the one the 1st respondent had inflicted by the order dated 04-11-2003. The component of cumulative stoppage of increments having the long-term and recurring effects mentioned above appear harsh and grossly disproportionate.

Accordingly the order of the 1st respondent bearing reference No.V-11014/38/2003/L&R(SZ)/7875 dated 04-11-2003 is set aside. The 1st respondent shall now *de novo* consider only the aspect as to the appropriate measure of penalty that would be adequate and meet the ends of justice not only to the organizational discipline but also to the petitioner having regard to the facts and circumstances and in the light of the observations herein. The 1st respondent shall conclude the *de novo* consideration and pass appropriate order within a period of two(2) months from the date of receipt of a copy of this Order. No further opportunity need be provided to the petitioner, as the 1st respondent is required only to apply his mind afresh on the quantum of punishment.

The writ petition is allowed to the extent above but in the circumstances without costs.

GODA RAGHURAM,J

25th JANUARY 2006

*TSNR